

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

EDWARD B. BARCLAY;)	
)	
Plaintiff,)	Case No. 6:11-cv-06260-TC
)	
v.)	ORDER
)	
U.S. AIRWAYS, a foreign)	
corporation, STEVAN GRESSIT and)	
JOHN DOE NO.2;)	
)	
Defendants.)	
_____)	

Magistrate Judge Thomas M. Coffin filed Findings and Recommendation on November 16, 2012, in the above entitled case. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). When either party objects to any portion of a magistrate judge's Findings and Recommendation, the district court must make a de novo determination of that portion of the magistrate judge's report. See 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

Defendants have timely filed objections. [#61]. I have, therefore, given de novo review of Magistrate Judge Coffin's rulings.

Defendant assigns error *inter alia* to the decision dicta enunciating California's heightened standard of care postulating that may have been the reason for his recommendation to deny defendants' motion for summary judgment. The opinion stated:

"It is well established that common carriers owe their passengers a duty of utmost care, are responsible for even the slightest negligence and are required to do all that human care, vigilance, and foresight reasonably can do under the circumstances. *Orr v. Pacific Southwest Airlines*, 208 Cal.App.3d 1467 (1989)." [#59-p.5].

While defendant is correct that this statement articulates California's statutory standard, in light of Oregon's standard, this is harmless error. Oregon holds common carriers to the highest degree of care and skill practicable for it to exercise. *Deason v. Tri-County Metro.Transp. Dist. Of Oregon*, 241 Or.App. 510, 515 (2011) (quoting *Brant v. Tri-Met*, 230 Or.App. 97, 103, 213 P.3d 869 (2009) (quotation marks omitted)). I find Oregon's standard consistent with that enunciated in Magistrate Judge Coffin's opinion.

Defendants' remaining arguments simply illustrate the material facts that are in dispute. As Magistrate Judge Coffin's recommendation stated, "while the evidence presented may not be sufficiently persuasive of causation to enable a trier of fact to find for the plaintiff, it is sufficient to defeat US Air's motion

for summary judgment." [#59-p.7].

I therefore find no error. Accordingly, I ADOPT Magistrate Judge Coffin's Findings and Recommendation filed November 16th, 2012, in its entirety.

Defendant's Motion for Summary Judgment [#24], is DENIED.
Defendant's Motion to Strike [#56], is DENIED.

IT IS SO ORDERED.

DATED this 13 day of January, 2013.


UNITED STATES DISTRICT JUDGE